**School Bus Services, Inc. *and* Amalgamated Transit Union, Division 757, AFL–CIO, CLC.** Case 36–CA–6566

August 31, 1993

## DECISION AND ORDER

BY CHAIRMAN STEPHENS AND MEMBERS DEVANEY AND RAUDABAUGH

On March 23, 1993, Administrative Law Judge James S. Jenson issued the attached decision. The Respondent filed exceptions and a supporting brief. The General Counsel and the Charging Party filed answering briefs.

The National Labor Relations Board has considered the decision and record in light of the exceptions and briefs and has decided to affirm the judge's rulings, findings,[1] and conclusions and to adopt the recommended Order as modified.[2]

## ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge and orders that the Respondent, School Bus Services, Inc., Portland and Gresham, Oregon, its officers, agents, successors, and assigns, shall take the action set forth in the Order as modified.

Substitute the following for paragraph 1(a).

''(a) Refusing to bargain collectively concerning rates of pay, wages, hours, and other terms and conditions of employment with Amalgamated Transit Union, Division 757, AFL–CIO, CLC, as the exclusive bargaining representative of its employees in the following appropriate unit:

> All employees working under its Tri-Met contracts at its Portland and Gresham, Oregon locations; excluding office clerical employees, professional employees, guards, and supervisors as defined in the Act.''

*Linda Scheldrup, Esq.*, for the General Counsel.
*Verne W. Newcomb, Esq.*, of Portland, Oregon, for the Respondent.
*David S. Paull, Esq.*, of Portland, Oregon, for the Union.

## DECISION

### STATEMENT OF THE CASE

JAMES S. JENSON, Administrative Law Judge. I heard this matter on October 22 and 23, 1991, in Portland, Oregon.[1] The charge was filed on March 14, the complaint issued on May 23 and was amended at the hearing. The complaint, as amended, alleges the Respondent is the successor to Special Mobility Services/Odyssey Travel with respect to ''special needs transportation services and driver training services'' in Multnomah County, Oregon, pursuant to a contract with Tri-County Metropolitan Transportation Division of Oregon (Tri-Met), a Portland, Oregon regional transportation system, and that since February 12, Respondent has refused to recognize and bargain with the Union which was certified as the representative of the predecessor's employees on March 15, 1990. The Respondent denies it is the legal successor and argues (1) that the General Counsel failed to establish that the Union represented a majority of its employees; (2) that the alleged unit is not appropriate since it includes two locations, whereas the certification is for a single location; (3) that its paratransit and school bus operations have a high degree of functional integration, thereby rendering the alleged appropriate unit to be inappropriate; and (4) that the Union essentially abandoned its collective-bargaining agreement with the predecessor, as well as abandoning the employees. All parties were given full opportunity to appear, to introduce evidence, examine and cross-examine witnesses, to argue orally, and to file briefs. Briefs were filed by each of the parties and have been carefully considered.

On the entire record in the case, and from my observation of the witnesses and their demeanor, I make the following

### I. JURISDICTION

School Bus Services, Inc. is engaged in the business of providing public bus service to elderly and infirm passengers and school bus services to several school districts in Oregon and Washington. During the 12-month period preceding issuance of the complaint, it had gross sales of goods and services valued in excess of $250,000 and purchased and received goods and materials valued in excess of $50,000 in Oregon directly from sources outside Oregon or from suppliers within Oregon who in turn obtained such goods and materials directly from sources outside Oregon. It is admitted and found that Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

[1] In adopting the judge's finding that the former Special Mobility Services (SMS) employees currently employed by the Respondent comprise an appropriate bargaining unit, we find that *P. S. Elliott Services*, 300 NLRB 1161 (1990), relied on by the Respondent, is readily distinguishable from the facts here. In that case, the employees lost their separate identity and were fully integrated into the existing operations of the successor employer. Here, in contrast, the former SMS paratransit employees continued to perform a unique function for the successor employer and were not integrated into the Respondent's existing transportation operations. Further, we note that, contrary to the Respondent's argument, the Board has clearly held that an employer which takes over only a portion of a predecessor's operation can be found to be a successor. See, e.g., *Hydrolines, Inc.*, 305 NLRB 416 (1991). Accordingly, we find the Respondent's assertions regarding what subsequently happened to that portion of SMS' operations which was not taken over by the Respondent irrelevant to our determination.

[2] We shall modify the judge's recommended Order to set forth the bargaining unit.

[1] All dates are in 1991 unless stated otherwise.

## II. THE LABOR ORGANIZATION INVOLVED

It is admitted and found that the Union is a labor organization within the meaning of Section 2(5) of the Act.

## III. ISSUES

1. Whether Respondent is the successor to the Special Mobility Service (SMS) paratransit operation.

2. Whether the paratransit drivers working for Respondent under the Tri-Met contracts constitute an appropriate collective-agreement unit.

3. Whether Respondent violated Section 8(a)(1) and (5) by refusing to recognize and bargain with the Union as the representative of paratransit drivers at its Portland and Gresham locations.

## IV. THE ALLEGED UNFAIR LABOR PRACTICES

### A. *The Setting*

Tri-County Metropolitan Transportation Division of Oregon (Tri-Met) provides mass transit, bus, and light rail services in Multnomah, Washington, and Clackamas Counties, Oregon. Tri-Met contracts with private contractors to provide paratransit services to handicapped persons and senior citizens in the tri-county area. Special Mobility Services (SMS) is a nonprofit corporation engaged in providing door-to-door transportation of handicapped and elderly persons in Portland and Eugene, Oregon. The owner of SMS also owns Odyssey Travel Club, a for-profit travel club for senior citizens. In addition to furnishing its members transportation to local group functions, Odyssey Travel provides transportation to and from the airport in conjunction with group cruises and international trips. From February 1986 through March 31, 1991, Tri-Met contracted with SMS to provide paratransit services under a single contract for Multnomah County, the only county involved in this proceeding. SMS employed approximately 70 drivers under the Tri-Met contract. Odyssey employed four to five drivers, who drove a total of 20 hours a week for Odyssey. While none of the Odyssey drivers ever drove for SMS, six of the SMS drivers also drove part time for Odyssey.

On March 15, 1990, the Union was certified as the collective-bargaining representative of ''all employees'' of Odyssey and SMS at 1132 S.E. Salmon, Portland, Oregon. Effective August 1, 1990, the maintenance of the Tri-Met vehicles and the scheduling and dispatching were transferred from SMS to Buck Medical Services in accordance with a modification of the then contract between SMS and Tri-Met. Consequently, SMS laid off its dispatchers and maintenance personnel. Following negotiations with the Union, a collective-bargaining agreement was signed September 13, 1990, effective the date of signing. Inasmuch as the parties expected the Tri-Met paratransit contract would go out for general bid for the first time since 1986, the expiration date of the contract was left open in order to insert a date 3 years from the date it was expected SMS would be awarded the next contract with Tri-Met. The contractual unit was comprised of about 4–6 Odyssey drivers and about 70 paratransit drivers.

On October 5, 1990, Tri-Met issued the ''request for proposals,'' RFPs, for bids on four contracts, two covering Multnomah County which was coextensive with the area covered under the SMS-Tri-Met contract. Respondent was awarded the two Multnomah County contracts. While SMS and the Union both challenged the award, and supplemental bids were requested, on February 20, Respondent was notified by Tri-Met that it intended to award the East and West Multnomah County contracts to it. The latest RFP required the successful bidder to hire the existing drivers to meet its needs. The record shows that on February 12, prior to Tri-Met's notification of intent to award the contracts to Respondent, Union Business Agent Heintzman wrote Respondent that the Union represented the existing SMS workers and demanded immediate bargaining. By letter dated February 14, Respondent's president responded that it would not be appropriate to meet with the Union since it had not received any information from Tri-Met that it had been awarded the contract. Heintzman testified he then contacted Tri-Met officials who confirmed the award to Respondent, and on February 27 wrote the president of Respondent that he understood ''that you have since been notified that you are the successful bidder and of Tri-Met's intent to award you the contract.'' He again requested a meeting to negotiate. Respondent's president responded by letter dated March 1 that while it had been awarded a ''letter of intent'' from Tri-Met, it had not been officially notified of the award, which was being appealed, but it was nevertheless arranging to interview all of the present drivers so that it would be able to proceed if it was awarded the contract.

On February 25, Respondent notified the SMS paratransit drivers by letter that it anticipated being awarded the new contract covering East and West Multnomah Counties. The letter set forth the requirements for hiring and requested they contract Sandy Davis or Diana Plahn, area managers for Respondent SMS and admitted supervisors, to set up interview appointments. The letter stated that if the employee did not respond by March 6, it would be assumed the individual wasn't interested in a job.

On February 26, Respondent and Tri-Met signed a ''start-up contract,'' effective through March 10, to cover the start-up costs that Respondent would incur in preparation for starting the Multnomah County paratransit service on April 1.

By letter dated March 6, the Union protested the Respondent's ''attempts to individually bargain with members'' of the Union and requested that the Respondent meet with it for the purpose of bargaining on March 14. Respondent's president responded by letter of March 8, that it still did not have a signed contract, and since another protest had been made against the program, he was not certain when the matter would be settled and, if awarded the contract, when that would occur. He then suggested that if the Union did in fact represent a majority of its employees in ''an appropriate bargaining unit,'' it would meet with the Union. He went on to suggest that the Union ''go to the NLRB and let the government decide what the appropriate bargaining unit is for School Bus Services, Inc. and let the employees decide in an election whether they want your organization to represent them.''

On March 9, Respondent sent another letter to those that had been interviewed informing them of orientation meetings, drug screening procedures, the need for a driving record printout, and the fact Respondent was setting up times for employees to come in and try on sample sizes of uniforms so they would be ready by April 1. An attachment to the letter set out the hourly pay rate, listed paid holidays, vacation

and sick leave policies, medical coverage, probationary policy, and the seniority system. A March 14 letter thanked the drivers for attending the orientation meetings, requested they confirm their intentions with respect to continuing on as a paratransit driver, and enclosed a revised wage and benefit policy. The letter stated that while Tri-Met had not yet executed a contract with Respondent, faced with an April 1 start-up date, it was necessary to proceed on the assumption it would do so. Also by letter of March 14, the Union informed Respondent that all current employees of Special Mobility Services, Inc., shown on an attached SMS seniority list, were represented by the Union and were exercising their right under the Tri-Met contracts to retain their employment after April 1.

On March 29, the East and West Multnomah Counties paratransit contracts were signed by Tri-Met and Respondent effective March 11, 1991, to June 30, 1992. On April 1, Respondent took over the operation of Tri-Met's paratransit services from Special Mobility Services. The employees hired by Respondent, 51 of the 65, had been employed by Special Mobility Services. Respondent has refused to recognize and bargain with the Union as the representative of Respondent's paratransit drivers driving under the East and West Multnomah Counties Tri-Met contracts.

### B. *Contentions of the Parties*

The General Counsel contends Respondent is a successor-employer to Special Mobility Services and that its refusal to recognize and bargain with the Union violates Section 8(a)(5) of the Act. The Respondent denies it is the successor to SMS, questions the majority status of the Union, argues that the unit alleged in the complaint is inappropriate and that the Union abandoned its agreement with SMS as well as SMS's employees.

### C. *Successorship*

The doctrine of successorship is designed to ensure that employee rights are not curtailed by ''a mere change of employers or of ownership in the employing industry.'' *NLRB v. Burns Security Services*, 406 U.S. 272, 279 (1972). See also *Zim's IGA Foodliner v. NLRB*, 495 F.2d 1131, 1140 (7th Cir. 1974), cert. denied 419 U.S. 838 (1974). Thus, where there is no change in the essential nature of the enterprise and a majority of the employees after the change of ownership or management were employed by the predecessor employer, the new employer is a ''successor'' who must recognize the incumbent union and deal with it as the bargaining representative of the employees. *Burns*, supra at 279–281. The bargaining obligation of a ''successor-employer'' derives from both the specific mandate of Sections 8(a)(5) and 9(a) of the Act that an employer must bargain with ''representatives designated or selected for the purposes of collective bargaining by the majority of the employees in a unit appropriate for such purposes,'' and from the general acknowledgement that a mere change in ownership does not destroy the presumption of continuing employee support for a certified or voluntarily recognized union. See *Burns*, supra at 277–279; *NLRB v. Denham*, 469 F.2d 239, 243–244 (9th Cir. 1972). ''The basic rationale is that a mere change in ownership, without an essential change in working conditions, would not be likely to change employee attitudes toward representation.'' *Premium Foods v. NLRB*, 709 F.2d 623, 627 (9th Cir. 1983).

The key question in each case is whether there is substantial continuity of the employing enterprise. In making its determination, the Board takes into consideration various factors, including the percentage of employees who were employed by the previous employer, the extent to which their former supervisors have been retained, the identity of skills used and functions performed by the employees, the continuation of the business in the same physical facility with the same or similar equipment, the continuity of products sold or services rendered, and the identity of the clientele. See *Burns*, supra at 279, 280 fn. 4; *Zim's IGA Foodliner*, supra at 1140–1142.

Applying the above standards to the record facts, it is concluded that there was substantial continuity in the employing enterprise between SMS and Respondent, and, accordingly, that Respondent was SMS's ''successor'' for the purposes of the Act.

As the record clearly shows, to man its paratransit operations under the Tri-Met contracts, Respondent was required to offer employment to the SMS paratransit drivers, and in fact hired 51 former SMS drivers out of a total complement of 65. Of particular significance is the fact that, from the perspective of the employees, their jobs did not change. There was no hiatus between employment by SMS and Respondent. When Respondent took over the Tri-Met contracts on April 1, the paratransit drivers continued driving the same Tri-Met owned vehicles they had driven while working for SMS, drove the same routes and transported the same passengers. The training required of paratransit drivers by both SMS and Respondent is similar, both requiring defensive driving, first aide, CPR and ''Passenger Assistance.'' The seniority list from SMS was carried over to Respondent and used in making route assignments. Employees were given credit for the time they worked for SMS and retained their positions on the seniority list. Also, the geographic area served by Respondent under its two contracts with Tri-Met—Multnomah County—is the same geographic area covered by SMS under its single contract. While Respondent did not hire the SMS supervisors, and the paratransit buses are kept at two locations instead of one when SMS was the contractor, no single factor is determinative, the Board instead looking at the totality of the circumstances. Indeed, in *Burns*, supra at 280 fn. 4, Burns utilized its own supervisors, and the Supreme Court nevertheless concluded that Burns was a successor-employer. The factors favoring successorship far outweigh the lack of continuity in supervision and the fact a few of the paratransit drivers operate out of the Gresham facility where their vehicles are kept. The record is clear that from the employee's perspective, their jobs remained essentially unaltered. There being substantial continuity in the employing enterprise between SMS and Respondent, it is found that Respondent is SMS's successor.

### D. *Appropriate Bargaining Unit*

On March 15, 1990, the Union was certified as the collective-bargaining representative of the employees of Odyssey Travel and Special Mobility Services in the following unit:

> All employees of the Employer at 1132 S.E. Salmon, Portland, Oregon, excluding office clerical employees,

professional employees, guards and supervisors as defined in the Act.

The 1990–1993 collective-bargaining agreement between ''Special Mobility Services/Odyssey Travel Club'' and the Union describes the bargaining unit as including:

> All employees in the classifications of bus driver, lead bus driver, mechanic [scheduler, dispatcher] and all other employees, regardless of title, who perform the work normally performed by those classifications.

The complaint alleges the following employees of Respondent constitute an appropriate unit:

> All employees of the Employer working under the Tri-Met contract at the Employer's Gresham, Oregon and Portland, Oregon locations; excluding office clerical employees, professional employees, guards and supervisors as defined in the Act.

The Respondent argues that the two location unit alleged in the complaint is inappropriate; that there is no presumption that the Union represented a majority of the employees in the alleged unit; that it was not shown that the Union did in fact represent a majority of the employees, but rather that it was disinterested in representing them since it never enforced the union-security clause in its collective-bargaining agreement with SMS nor collected any initiation fees, dues, or assessments; that the Union took no other action to enforce its collective-bargaining agreement with SMS except as it applied to Odyssey Travel employees; that it has no employees at 1132 S.W. Salmon, Portland, the site named in the certification; and that the facts establish a unit consisting of school bus drivers and paratransit drivers at its Gresham location is appropriate.

As the record shows, during the last few months of the SMS-Tri-Met agreement, the certified unit consisted of approximately 70 paratransit and four or five Odyssey drivers. The collective-bargaining agreement between SMS and the Union was signed September 13, 1990, but since the parties expected the Tri-Met paratransit contract would be put out for bid shortly, the expiration date was left open so that a date could be inserted 3 years from the date it was expected SMS would be awarded the next contract. The record shows that Union Business Agent Heintzman departed the Portland area 2 days following ratification of the collective-bargaining agreement to participate in the Desert Storm conflict. Consequently, although the SMS employees were enrolled as members of the Union, the paper work for dues collection was not begun, and by the time Heintzman returned from Desert Storm, it had been determined that Respondent was to be awarded the Tri-Met paratransit contracts to service Multnomah County in the place of SMS. In these circumstances, the argument that the Union had either abandoned or was disinterested in representing the paratransit drivers, is totally without merit. In this regard, it is noted that the Union asserted its representative capacity as soon as it learned Respondent was successful in bidding the Tri-Met contracts. Thus, there was no evidence presented by Respondent that the Union had either abandoned or disclaimed interest in representing the former SMS employees or that it had any valid basis for doubting the Union's continued majority status.

Prior to being awarded the Tri-Met paratransit contracts, Respondent's operations were limited to transporting school children pursuant to contracts with a number of school districts in Oregon and one in Washington. It operated 308 regular school bus routes utilizing what appears to be a standard type of school bus. In conjunction with its school contracts, Respondent employed 57 special education bus drivers, only a few of which operate out of the Gresham facility, for the transport of special needs children to and from school. They operate buses similar to those driven by paratransit drivers. None operate out of the Portland facility. Subsequent to acquiring the Tri-Met contracts, Respondent also acquired a contract with the Port of Portland to operate an airport bus service. The school bus drivers transport school age children whereas the paratransit drivers transport elderly and disabled adults. School bus drivers drive fixed routes whereas paratransit drivers do not, their routes depending on the needs of the client. School buses do not have seat belts whereas paratransit business have various types of restraints. Clients utilizing paratransit buses are encouraged to pay for their transportation through either ticket purchases or depositing cash in a fare box. This does not apply to school children. Vehicles driven by school bus and special education drivers are painted yellow, have ''School Bus Services, Inc.'' printed on the sides and are clearly identified as school buses in accordance with state law. Paratransit vehicles are primarily white and display the Tri-Met colors and logo. School buses are either owned by Respondent or leased from the various school districts, whereas all paratransit vehicles are owned by Tri-Met. While the regular school buses do not have radios, both the paratransit and special education vehicles do. All Tri-Met paratransit vehicles are dispatched by Buck Ambulance Service while school buses are dispatched by Respondent. In the event of inclement whether, Tri-Met decides whether the paratransit buses will operate and relays the decision to Buck Ambulance Service. The various school districts determine whether the schools will operate in inclement weather and advise Respondent's dispatcher. School bus drivers drive split shifts, driving to and from school totalling 3-1/2 to 4-1/2 hours per day, Monday through Friday only during the school year and have school holidays and vacation periods off. Paratransit drivers work 6-1/2 hours part-time or 8 to 10 hours full-time shifts, 6 days a week. They work year around and observe Tri-Met designated holidays. All paratransit drivers are under the supervision of Area Manager Diana Plahn, whose business cards identify her as either ''area manager'' or ''lift program manager.'' Area Manager Sandy Davis has an office in Portland and another in Gresham and is responsible for the day-to-day operation of the Gresham school bus operation. She testified that while some of her paratransit duties had been ''put on hold,'' she hoped to resume them shortly. Both she and Plahn worked together in setting up the paratransit system at the Gresham office. The State of Oregon licensing requirements for school bus and paratransit drivers is different. While some of the paratransit drivers employed by SMS also possessed the Oregon School Bus license as a consequence of having driven school buses for employers prior to working for SMS, it does not appear they drove school buses for Respondent. Training for school bus and paratransit drivers is different. Paratransit drivers are

required to wear a Tri-Met uniform. School bus drivers must be neat and clean but do not wear uniforms. Since medical benefits are available only to full-time employees, unlike paratransit drivers, school bus drivers are not covered. There is a single seniority list covering the paratransit drivers at both the Portland and Gresham facilities. School bus driver seniority is determined by location and is lost on transfer. No school buses operate from the Portland facility where the majority of the paratransit drivers are located. Both classes of drivers work out of Gresham and utilize the same employee facilities, albeit at different times. Respondent has 10 or 11 employees trained to drive both paratransit and school buses, but only 5 or 6 have paratransit uniforms. While the Respondent plans to cross-train drivers, the program had not begun at the time of the hearing.

The Board has long made it clear that it need not determine ''the *only* appropriate unit, or the *ultimate* unit, or the *most* appropriate unit: the Act requires only that the unit be appropriate.''[2] In resolving the unit issue, the Board's primary concern is to group together only employees who have substantial mutual interests in wages, hours, and other conditions of employment, i.e., whether the employees share a community of interests. In making that determination, it uses a number of tests, including (1) the extent and type of union organization of the employees; (2) the bargaining history in the industry as well as with respect to the parties involved; (3) similarity of duties, skills, interests, and working conditions of the employees; (4) the organizational structure of the company; and (5) the desires of the employees. It is clear from the record that the Union was the choice of the majority of the SMS paratransit drivers and that their duties, skills, interests, and working conditions have remained substantially unchanged despite the fact that they do not all operate out of the same facility as they did working for SMS. The conditions of employment of the school bus drivers operating out of the Gresham facility are sufficiently diverse from those of the paratransit drivers to rebut a conclusion that a unit limited to all drivers operating out of the Gresham facility is the only appropriate unit. Rather the similarity of duties, skills, interests, and working conditions of the paratransit drivers working under the Tri-Met contracts at the Respondent's Portland and Gresham locations, compels a finding that a unit encompassing those two locations is appropriate as alleged in paragraph 6 of the complaint.

### E. *Refusal to Bargain*

The complaint alleges that Respondent as the successor to SMS violated Section 8(a)(5) of the Act by refusing to recognize the Union as the representative of its employees in the unit which has been found to be appropriate. Aside from its other claims which have been dealt with herein, the Respondent has questioned the majority representative status of the Union. Under *Burns*, 406 U.S. 272, a successor is required to bargain with the union representing the employees of its predecessor only if a majority of the successor's work force is comprised of former employees of the predecessor. In Burns, the Supreme Court indicated that a bargaining obligation may arise even before actual hiring by the successor, where, as here, the successor ''plans to retain all of the employees in the unit.'' In the instant case, Respondent was required by Tri-Met to hire its predecessor's employees and in fact hired the vast majority. Thus, under the principles set out in *Burns*, Respondent lacked a valid basis for questioning the Union's majority status. In *Burns* the Supreme Court held that the Board could properly require a successor employer to bargain with an incumbent union, where despite the transfer of business, the bargaining unit continues to be ''an appropriate one,'' a majority of the successor's employees has been represented by the incumbent union, and the successor ''could not reasonably have entertained a good faith doubt'' that the union still represented a majority of the employees. Accordingly, it is found that the Respondent violated Section 8(a)(5) of the Act in refusing to bargain with the Union after the Union's request for recognition following the institution of the requirement that it hire its predecessor's employees, i.e., February 12, 1991.

## CONCLUSIONS OF LAW

1. Respondent is engaged in commerce and the Union is a labor organization within the meaning of the Act.

2. All employees of the Respondent working under the Tri-Met contracts at the Respondent's Gresham and Portland, Oregon, locations; excluding office clerical employees, professional employees, guards, and supervisors as defined in the Act, constitute a unit appropriate for purposes of collective bargaining within the meaning of Section 9(a) of the Act.

3. Amalgamated Transit Union, Division 757, AFL–CIO, CLC, is the exclusive representative of all employees in the aforesaid appropriate unit for the purposes of collective bargaining within the meaning of Section 9(a) of the Act.

4. By refusing on and after February 12, 1991, and at all times thereafter, to bargain collectively with the above-named labor organization as the exclusive representative of all its employees in the appropriate unit, Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(5) and (1) of the Act.

5. The aforesaid unfair labor practices are unfair labor practices affecting commerce within the meaning of Section 2(6) and (7) of the Act.

## THE REMEDY

Having found that Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(5) and (1) of the Act, I shall recommend that it cease and desist therefrom, and, on request, bargain collectively with the Union as the exclusive representative of all employees in the appropriate unit.[3]

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended[4]

[2] *Morand Bros. Beverage Co.*, 91 NLRB 409, 418 (1950), enfd. 190 F.2d 576 (7th Cir. 1951).

[3] The Union's argument that the Respondent was bound by the collective-bargaining agreement between it and SMS is without merit. That issue was set to rest by the Supreme Court in *Burns*, 406 U.S. at 281–282.

[4] If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

## ORDER

The Respondent, School Bus Services, Inc., Portland and Gresham, Oregon, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Refusing to bargain collectively concerning rates of pay, wages, hours, and other terms and conditions of employment with Amalgamated Transit Union, Division 757, AFL–CIO, CLC, as the exclusive bargaining representative of its employees in the appropriate unit found above, by failing to recognize the Union as the majority representative of such employees.

(b) In any like or related manner interfering with, restraining, or coercing employees in the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) On request, bargain with the above-named labor organization as the exclusive representative of all employees in the aforesaid appropriate unit, with respect to rates of pay, wages, hours, and other terms and conditions of employment.

(b) Post at its facilities in Portland and Gresham, Oregon, copies of the attached notice marked ''Appendix.''[5] Copies of the notice, on forms provided by the Regional Director for Region 19, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately on receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

(c) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

[5] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading ''Posted by Order of the National Labor Relations Board'' shall read ''Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board.''

## APPENDIX

### NOTICE TO EMPLOYEES
### POSTED BY ORDER OF THE
### NATIONAL LABOR RELATIONS BOARD
### An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT refuse to recognize and bargain collectively with Amalgamated Transit Union, Division 757, AFL–CIO, CLC as the exclusive bargaining representative of the employees in the following appropriate unit:

> All employees of the Respondent working under the Tri-Met contracts at its Portland and Gresham, Oregon locations; excluding office clerical employees, professional employees, guards and supervisors as defined in the Act.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce our employees in the exercise of rights guaranteed them by Section 7 of the Act.

WE WILL on request, bargain collectively with Amalgamated Transit, Division 757, AFL–CIO, CLC as the exclusive bargaining representative of all employees in the appropriate unit as found above.

SCHOOL BUS SERVICES, INC.